EX PARTE OR LATE FILED

Association for Local Telecommunications Services

February 10, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte in CC Docket 96-98

Dear Ms. Salas,

Enclosed please find two copies of a letter submitted to the Chief of the Common Carrier Bureau today. This letter should be filed as an ex parte communication in CC Docket 96-98. Could you please date stamp the extra copy of the letter and return it to ALTS in the enclosed self-addressed envelope.

Should you have any questions, please call me at 202 969-2582.

Sincerely

Emily M. Williams

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No. of Copies rec'd 0+2
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888 17th Street, NW • Suite 900 • Washington, DC 20006 • 202.969.ALTS • Fax: 202.969.ALT1

ALTS
Association for Local Telecommunications Services

February 10, 1999

Mr. Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: **REQUEST FOR IMMEDIATE ACTION** - To Remove Regulatory Uncertainty in light of the Supreme Court's Decision in AT&T v. Iowa Utilities Board

Dear Mr. Strickling:

The Association for Local Telecommunications Services ("ALTS") has learned that several incumbent local exchange carriers ("ILECs") are using the recent Supreme Court decision in AT&T Corp. v. Iowa Utilities Board[1] to forestall local telephone competition. While we are heartened that Chairman Kennard has obtained agreements from the major ILECs to comply with their signed agreements, some ILECs have claimed that they are now under no legal obligation to provide unbundled network elements to new entrants, or are refusing to negotiate new agreements, refusing to allow competitive local exchange carriers ("CLECs") to add additional UNEs to their current contracts, or refusing to allow new entrants to "opt" into agreements that are more than one year old. Nothing in the Supreme Court decision warrants such positions and they clearly undermine the ability of CLECs to provide and expand their services and the ability of consumers to have the choices that Congress clearly intended them to have.

For these reasons ALTS urges the Commission to act as expeditiously as possible to remove the regulatory uncertainty arising from the Supreme Court decision. The Commission should take two actions immediately. First, it should issue a public notice no later than February 12th, stating that it expects the ILECs to comply with all federal and state statutory and regulatory requirements, their signed contracts and tariffs, and negotiate in good faith with respect to any new or renewal request. In addition, the Commission should reaffirm its initial conclusion that ILECs must allow new entrants to opt into any existing agreements, or portions thereof, unless the ILEC can demonstrate that technical requirements or network configurations have changed. See Local Competition Order at para. 1319. Finally, the Commission should declare unequivocally that it will not tolerate efforts by the ILECs to use the Supreme Court decision to

[1] No. 97-826 (decided Jan. 25, 1999).

undermine progress in promoting local competition and that it will take all actions necessary to ensure that competitors and their customers continue to obtain all network elements necessary to provide or obtain any local exchange service, including broadband services.

Second, the Commission should initiate and complete a proceeding as quickly as possible to issue a new rule concerning the list of unbundled network elements that the ILECs must provide. The Commission should set forth a short comment period with the goal of issuing a final decision in three months.

In initiating this rulemaking the Commission should be guided by the following principles. First, the Commission should take into account the purposes and structure of the Act. The primary purpose of the Act is the promotion of competition in the local telecommunications services markets throughout the nation on an accelerated basis.[2] And Congress clearly intended that new entrants would have several options for entering local markets, including the use of UNEs. In promulgating a rule to govern the availability of network elements, the Commission should avoid interpretations of the "necessary" and "impair" standards that are so limiting as to preclude opportunities for meaningful competitive entry. This principle mandates that the burden of proof that a UNE not be made available pursuant to the "necessary" or "impair" standards should be on the ILECs seeking to deny access to any UNEs.

The Commission should also consider the evidence produced in the three years since the passage of the Telecommunications Act of 1996 relating to UNE purchases by new entrants as strong evidence of what elements would pass the "necessary" and "impair" tests. While ALTS has not made a thorough review of the UNEs that its members have ordered, it is clear that few have provisioned their own local loops, while hundreds of switches have been deployed. Evidence of this type should be probative of the needs of the new entrants.

Third, the determination of what UNEs must be made available should not require CLECs to make market-specific analyses. Case-by-case determinations would be prohibitively costly and time-consuming for new carriers and for state commissions and would result in delay of competitive choices for consumers. The imperative to avoid delay is one of the reasons that the FCC sought to establish national standards in the first place. The Supreme Court's vacation of Rule 51.319 does not undercut the rationale supporting national rules. In addition, the presence or absence of alternatives to UNEs should not, in general, vary significantly from location to location or from carrier to carrier.[3]

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2 H. Conf. Rep. No. 104-458 at 1 (1996), S. Rpt. No. 104-23 at 16-17 (1995).

3 ALTS recognizes that as facilities-based competition grows and alternatives to use of ILEC facilities increase, the number of UNEs to which the ILEC must provide access will probably decrease. Therefore, it may be that initially, the Commission should adopt a nationwide rule for a number of elements, but as competition develops it

Fourth, the Commission, to the extent possible, should craft a test for "necessary' and "impair" that can be used on a going forward basis. Future technological changes and the continued deployment of new facilities by CLECs will in all likelihood mean that fewer ILEC elements will need to be made available under Section 251 in the future. Nonetheless, it is also clear that advances in technology may result in some additional elements becoming necessary for the provision of competitive services in the future. Along these same lines, the Commission should not limit its proceeding mandated by the Supreme Court ruling to those elements specifically mentioned in the vacated rule. There are a number of additional UNEs that have been requested by new entrants since the initial adoption of Section 51.319. To the extent that the Commission has not ruled on those requests, they should be considered in the new proceeding.[4]

ALTS stands ready to help the Commission in any way it can to further the process of expeditiously complying with the Supreme Court directives.

Very truly yours,

John Windhausen, Jr.

John Windhausen, Jr.
President

cc: Chairman Kennard
Commissioner Ness
Commissioner Powell
Commissioner Tristani
Commissioner Furchtgott-Roth
Secretary Salas

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should consider altering its nationwide rules on periodic bases, or develop another procedure to accommodate the evolution of facilities-based competition.

[4] For example, the Commission has pending a petition for reconsideration of its initial Report and Order in CC Dkt 96-98 that seeks to have ILEC-owned inside wire declared to be a UNE that must be provided to new entrants pursuant to Section 251. In addition in CC Dkt 98-147, ALTS and other commenters have identified additional UNEs, including extended links, that are necessary to the provision of broadband services.